



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

Steven P. French, M.D.; Decision and Order

On February 11, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Steven P. French, M.D. (hereinafter, Registrant) of Jackson, Wyoming. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FF5659505. *Id.* It alleged that Registrant is "without authority to handle controlled substances in Wyoming, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that the Wyoming Board of Medicine (hereinafter, the Board) issued a Findings of Fact, Conclusions of Law, and Order on April 17, 2020. *Id.* at 1. According to the OSC, the Board accepted Registrant's voluntary relinquishment of his Wyoming medical license following its finding, *inter alia*, that Registrant was convicted of driving under the influence. *Id.* at 1-2. The Board further found that during Registrant's arrest for driving under the influence, Wyoming authorities "discovered in [Registrant's] possession a prescription bottle of lorazepam 0.5 mg pills belonging to one of [his] patients, but with one pill missing." *Id.* at 2.

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

Adequacy of Service

In a Declaration, dated July 21, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Cheyenne Resident Office of the Denver Field Division, stated that on September

21, 2020, prior to the issuance of the OSC, he had communicated via email with Registrant regarding Registrant's DEA registration. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3 (DI's Declaration), at 1. The DI stated that the following day, "[Registrant] responded to the email [the DI] had sent him and indicated that he had moved to Alaska and that for any future communications [the DI] should contact him via email." *Id.*; *see also* RFAAX 3, Appendix (hereinafter, App.) A (email exchange with Registrant). On February 12, 2021, the DI sent a copy of the OSC to Registrant via email. *Id.* at 1. The DI stated that later that day, Registrant "responded to [the] email and indicated that he received a copy of the [OSC]." *Id.* at 1-2; *see also* RFAAX 3, App. B (email from Registrant). The DI stated that, as of July 21, 2021, "DEA has not received any correspondence from [Registrant] or any attorney acting on his behalf concerning the [OSC]." RFAAX 3, at 2.

The Government forwarded its RFAA, along with the evidentiary record, to me on August 10, 2021. In its RFAA, the Government represents that "[Registrant] has not submitted a timely request for a hearing in this matter." RFAA, at 1. The Government seeks to revoke Registrant's DEA registration because "[Registrant] lacks authority to handle controlled substances in the State of Wyoming, the state where he is registered with DEA." *Id.*

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on February 12, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI's Declaration and the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order

based on the record submitted by the Government, which constitutes the entire record before me.

21 C.F.R. § 1301.43(e).

FINDINGS OF FACT

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. FF5659505 at the registered address of 6605 N Snake River Woods Dr, Jackson, WY 83001. RFAAX 1 (Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on September 30, 2021. *Id.*

The Status of Registrant's State License

On January 16, 2020, Registrant submitted a letter to the Board informing it that he was voluntarily relinquishing his Wyoming medical license. RFAAX 3, App. C, at 19. On March 19, 2020, a member of the Board petitioned the Board to accept Registrant's voluntary relinquishment of his Wyoming Physician License. *Id.* at 13. On April 17, 2020, the Board issued its Findings of Fact, Conclusions of Law, and Order Accepting Voluntary Relinquishment of the Wyoming Physician License of Steven P. French, M.D., Wyoming Physician License No. 3068A (hereinafter, Board Order). *Id.* at 1.

According to the Board Order, in September 2018, Registrant's clinical privileges were permanently revoked by Crook County Medical Services District in Sundance, Wyoming based upon an incident in August 2018 where Registrant was allegedly intoxicated and exhibited "disruptive, abusive, and threatening behavior" at the hospital while he was off-duty. *Id.* at 3. When the Wyoming Medicine Board opened a complaint on the matter, Registrant denied any inappropriate behavior and "asserted that he had unilaterally resigned his clinical privileges as opposed to them being revoked." *Id.* On July 2, 2019, while the first complaint was still pending, Registrant applied to renew his Wyoming medical license and indicated on his

application that he “was convicted of driving under the influence on November 26, 2018, related to an arrest incident that occurred on July 12, 2018.” *Id.*

The Board opened an additional complaint concerning the arrest incident. *Id.* The Board Order states that Registrant was arrested for a DUI at a gas station, and “[d]uring the arrest, sheriff deputies also located a prescription bottle of [l]orazepam 0.5 mg for 30 pills, of which one pill was missing.” *Id.* at 4. Further, “[t]he label indicated the prescription was written by [Registrant] for one of his patients” and “[i]t was determined that the prescription was filled in Sundance, Wyoming, on the same day [Registrant] was arrested.” *Id.* The Board Order states that according to the sheriff’s report, Registrant refused intoximeter breath testing for alcohol, the sheriff deputies obtained a search warrant, and Registrant’s blood was drawn that evening indicating that Registrant had an ethyl alcohol concentration of 0.190. *Id.* Further investigation by the Board found that Registrant had three additional DUI convictions from 2008, 2012, and 2018. *Id.*

The Board ordered a Clinical Professional Fitness to Practice Evaluation of Registrant on September 26, 2019, and Registrant was evaluated the week of November 4-7, 2019. *Id.* at 5. The evaluation recommended that Registrant enter into a residential treatment program for addiction, engage in a monitoring contract with the Wyoming Professionals Assistance Program for the remainder of his career, abstain from controlled substances, follow up with local outpatient care following his treatment program, attend addiction recovery support meetings, and explore the option of using medication with a treating psychiatrist. *Id.* at 6.

According to the Board Order, on December 30, 2019, Registrant agreed to voluntarily refrain from the practice of medicine until the disciplinary matter was resolved. *Id.* However, Registrant “refused and/or failed to comply” with any of the recommendations from the evaluation. *Id.* Following the letter that Registrant submitted on January 16, 2020, Registrant also emailed the Board on February 14, 2020, and wrote that he was, “no longer a member of [the] organization thus [the] rules and regulations no longer [applied] to [him].” *Id.* at 6-7. In

lieu of further disciplinary proceedings, the Wyoming Medicine Board sought to accept Registrant's offer to voluntarily relinquish his Wyoming medical license. *Id.* at 7. The Board Order accepted Registrant's voluntary relinquishment of his Wyoming medical license and thus ordered his authority and ability to practice medicine in Wyoming to be relinquished. *Id.* at 11.

According to Wyoming's online records, of which I take official notice, Registrant's medical license remains relinquished and Registrant is not authorized in Wyoming to practice medicine.¹ Wyoming Board of Medicine Physician License Search, wyomedboard.wyo.gov/physicians/physician-license-look-up (last visited date of signature of this Order). *Id.* Further, Wyoming's online records, of which I take official notice, show that Registrant's Wyoming individual controlled substance registration is not currently active.² Wyoming State Board of Pharmacy Licensing, <https://pharmacyboard.wyo.gov/licensing/controlled-substance-reg> (last visited date of signature of this Order).

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine nor to handle controlled substances in Wyoming, the state in which Registrant is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to

¹ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

² See *supra* n.1 regarding official notice.

engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Under Wyoming law, “dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Wyo. Stat. Ann. § 35-7-1002(a)(vii) (West, current through Chs. 1 to 169 of the 2021 Regular Session of the Wyoming Legislature). Further, “practitioner” means .

. . [a] physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.” *Id.* at § 35-7-1002(a)(xx)(A). Because Registrant is not currently licensed as a physician, or otherwise licensed, in Wyoming, he is not authorized to dispense controlled substances in Wyoming.³

Here, the undisputed evidence in the record is that Registrant currently does not have authority to practice medicine nor to handle controlled substances in Wyoming. As already discussed, only a licensed practitioner is authorized to dispense controlled substances in Wyoming. Additionally, Registrant is not actively registered to dispense controlled substances in Wyoming. Thus, because Registrant is not currently licensed to practice medicine nor to handle controlled substances in Wyoming, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant’s DEA registration be revoked.

³ Furthermore, Wyoming law requires “[e]very person who . . . dispenses any controlled substance within this state . . . [to] obtain every two (2) years, on or before July 1, a registration issued by the board in accordance with its rules.” Wyo. Stat. Ann. § 35-7-1024(a) (West, current through Chs. 1 to 169 of the 2021 Regular Session of the Wyoming Legislature). As found above, Registrant’s Wyoming controlled substances registration is not active.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. FF5659505 issued to Steven P. French, M.D. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Steven P. French to renew or modify this registration, as well as any other pending application of Steven P. French, for additional registration in Wyoming. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

Anne Milgram,
Administrator.

[FR Doc. 2021-20245 Filed: 9/17/2021 8:45 am; Publication Date: 9/20/2021]